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AZLAN MAIDIN & ANOR

v.

PENTADBIR TANAH MELAKA TENGAH & ANOR

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HIGH COURT MALAYA, MELAKA
LOW HOP BING J
[ORIGINATING SUMMONS NO: 24-461-2004]
28 NOVEMBER 2006

C ***LAND LAW:*** *Caveat - Private caveat - Locus standi - Whether private caveats have lapsed - Whether plaintiffs entitled to decree of specific performance - Whether plaintiffs had locus standi to commence application*

D The applications herein were: (1) plaintiff's encl. (1) by way of originating summons, seeking, *inter alia*, an order that the first defendant ('the land administrator') do expunge the registration and transfer to the second defendant of the land held under GMM 204 Lot 917 in the Mukim of Pringgit, Melaka ('the land') and (2) second defendant's encl. (9) by way of summons in chambers seeking an order to strike out plaintiff's encl. (1). The original registered owner of the land was one Zamnah Maidin, the plaintiffs' sister. It was the plaintiffs' allegation that Zamnah was holding the land in trust for all her siblings including the plaintiffs. On or about 19 November 1986, Zamnah had transferred the land to the first plaintiff's sister in law, one Jamilah Mohd Isa as trustee. Subsequently, Jamilah had transferred the land to her son, Asreen Daud who, having taken a loan from a bank, had defaulted. Pursuant to a land administrator's order for sale at a public auction, the second defendant had successfully bidded for the land at a consideration of RM270,000. The first plaintiff and second plaintiff both lodged a private caveat (first caveat and second caveat) respectively. Both first and second plaintiffs failed to remove the caveats after they were required to do so. Hence, encl. 1 and encl. 9 respectively. It was submitted by the second defendant that the first caveat and second caveat lodged by the first plaintiff and second plaintiff respectively had lapsed on 5 September 2004 and 7 November 2004, as a result of which they do not have any right or *locus standi* to commence this originating summons. The plaintiffs, however, contended that the facts surrounding the plaintiffs' application not only disclosed a reasonable cause of action but also strong grounds for allowing the application itself.

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Held (striking out plaintiffs' application in encl. (1) and order in terms of defendants' application in encl. (9)):

(1) As the two caveats have lapsed, the plaintiffs were no longer relying on any claim to a caveatable or registrable interest in the land. They were therefore not relying on nor entitled to a decree of specific performance. The affidavits filed herein have also shown that the plaintiffs had never become the registered owners or purchasers of the land. At all material time, their sister, Zamnah, and then their sister in law, Jamilah, had been the owner successively until the subsequent transfers. The land was ultimately sold to the second defendant at a public auction pursuant to the order for sale. The plaintiffs have not discharged their onus of proving that they have the *locus standi* to commence their application in encl. 1 against the defendants. (paras 8 & 10)

For the plaintiff - Zainur Zakaria (Kenneth Gomes with him); M/s Sabarudin Othman & Ho

For the 2nd defendant - Ahmad Musthafi Mohamed; M/s Koh Kim Leng & Co

Reported by Suhainah Wahiduddin

JUDGMENT

Low Hop Bing J:

Applications

[1] Before me are the following applications:

(1) Plaintiff's encl (1) by way of originating summons, seeking *inter alia* an order that the first defendant ("the land administrator") do expunge the registration and transfer to the second defendant of the land held under GMM 204 Lot 917 in the mukim of Pringgit, state of Melaka ("the land") *vide* presentation No. 3751/2004; and

(2) Second defendant's encl (9) by way of summons in chambers seeking an order to strike out plaintiff's encl (1).

A **Factual Background**

[2] The original registered owner of the land was one Zamnah bt Maidin who is the plaintiffs' sister. The plaintiffs alleged that:

B (1) Zamnah was holding the land in trust for all her siblings including the plaintiffs, and had filed originating summons No. MT2-24-182-2002 to recover the land, which had been fixed for hearing on 21 March 2005 and the decision therein would depend on the outcome of these two applications before me;

C (2) Zamnah had on or about 19 November 1986 transferred the land to the first plaintiff's sister-in-law, one Jamilah bt Mohd Isa as a trustee; and

(3) Jamilah had subsequently transferred the land to her son Asren
D bin Daud who, having taken a loan from a bank, had defaulted.

[3] The other relevant chronology of events may be tabulated as follows:

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Date	Event
6 December 2003	Pursuant to a land administrator's order for sale, at a public auction held at the Melaka Tengah land office, the second
F	defendant successfully bidded for the land at a consideration of RM270,000.
9 February 2004	The first plaintiff lodged a private caveat on the land *vide* presentation No. 292/
G	2004 ("the first caveat").
13 May 2004	The second defendant completed full payment of the consideration to the chargee bank and presented the certificate of sale in Form 16I *vide* presentation
H	No. 3751/2004.
19 May 2004	The chargee bank lodged Form 19H for the purpose of removing the first caveat in accordance with s. 326 of the National
I	Land Code 1965.

5 July 2004	The first defendant (land administrator) served Form 19C on the first plaintiff requiring the first plaintiff to remove the first caveat or to obtain an order from the court to extend the same within two months thereof ie, on or before 5 September 2004 but the first plaintiff had failed to do so and the first caveat lapsed on 5 September 2004.
27 August 2004	The second plaintiff lodged another private caveat on the land *vide* presentation No. 2048/2004 ("the second caveat").
6 September 2004	The first defendant registered the certificate of sale in Form 16I presented by the second defendant *vide* presentation No. 3751/2004. The second defendant (the successful bidder and the new owner) lodged Form 19H to remove the second caveat.
7 September 2004	The first defendant served Form 19C on the second plaintiff requiring the second plaintiff to remove the second caveat or obtain an order from the court to extend the same within two months ie, on or before 7 November 2004, but the second plaintiff had failed to do so. The second caveat lapsed on 7 November 2004.
29 October 2004	The plaintiffs filed originating summons in encl (1) seeking an order *inter alia* to set aside the transfer of the land to the second defendant.
30 June 2005	The second defendant filed summons in chambers in encl (9) to strike out plaintiffs' encl (1).

A ***Locus Standi***

[4] It was submitted by Mr. Ahmad Musthafi bin Mohamed that the first caveat and the second caveat lodged by the first plaintiff and second plaintiff respectively had lapsed on 5 September 2004 B and 7 November 2004, as a result of which they do not have any right or *locus standi* to commence this originating summons.

[5] Plaintiffs' learned counsel Dato Zainur Zakaria (Mr. Kenneth Gomes with him) did not deny the fact that the two caveats had lapsed but contended that the facts surrounding the plaintiffs' C application not only disclose a reasonable cause of action but also strong grounds for allowing the application itself.

[6] In my view, these two applications revolve around the fundamental issue of the plaintiff's *locus standi.* That being the case, D it is appropriate for me to hear and determine encl (9) first.

[7] The burden is cast on the plaintiffs to establish that they have the necessary *locus standi* to commence encl (1) against the defendants.

E **[8]** As the two caveats have lapsed, the plaintiffs are no longer relying on any claim to a caveatable or registrable interest in the land. They are therefore not relying on nor entitled to a decree of specific performance. The affidavits filed herein have also shown F that the plaintiffs had never become the registered owners or purchasers of the land. At all material time, their sister Zamnah, and then their sister-in-law, Jamilah had been the owner successively until the subsequent transfers alluded to in the above chronology of events. The land was ultimately sold to the second G defendant at a public auction pursuant to the order for sale. I find that the plaintiffs have not discharged their burden in establishing their *locus standi*.

[9] The plaintiffs' allegations, that the then registered owner ie, their sister Zamnah had held the land in trust for them and had H subsequently transferred the land to Jamilah who was alleged to have commited a breach of trust by transferring the land to her son Asren, may have implicated their sister Zamnah and their sister-in-law Jamilah on grounds of alleged breaches of trust. On those allegations, the plaintiffs' cause of action may well be against I Zamnah and Jamilah. However, it must be immediately emphasised that I express no opinion on merits of that cause of action if any.

[10] On the applications before me, I need only say that the plaintiffs have not discharged their onus of proving that they have the *locus standi* to commence their application in encl (1) against the defendants.

Conclusion

[11] By reason of the above, I hold that the plaintiffs' application in encl (1) should be struck out with costs which I hereby do. Consequentially, I make an order in terms of defendants' application in encl (9).